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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1231 OF 2002

Shivaji Janappa Landge ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr. D.G. Khamkar for the Appellant.

Dr. F.R. Shaikh, A.P.P. for the Respondent.

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 20, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The accused-appellant has challenged the judgment and order of the IV Additional Sessions Judge, Solapur. He has been convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment and payment of fine of Rs.5000/-.

2. The case of the prosecution is that the victim Sunita was married to the accused about 8 or 9 years prior to the incident. On 2.8.2001 at about 7.00 a.m. a dead body was seen in the field belonging to Balasaheb Thengil by one of his farm hands. He recognised the body to be that of the wife of the accused who was also working on the land owned by Balasaheb Thengil.

3. The incident was reported to the police and A.D.

No. 33/2001 was registered. The police arrived at the scene of offence and the spot panchanama where the dead body was found and inquest panchnama were drawn. In the meantime, the father of the victim was informed of her death. He arrived at the spot and found that there was a swelling around the neck of the victim. The father of the victim suspected foul play on the part of the accused and, therefore, lodged the F.I.R. in the evening of 2.8.2001.

4. The body of the victim was sent for post-mortem examination and the medical officer on duty found that the hyoid bone was fractured. This indicated that the victim was strangulated. The medical officer found that the burns on the victim were post-mortem. The accused was arrested on the same day i.e. 2.8.2001 at about 6.30 p.m. and was convicted of the charge by the Sessions Judge, Solapur.

5. Being aggrieved by the order of conviction, the accused has filed the present appeal.

6. With the assistance of the learned advocate appointed for the accused and the learned A.P.P., we have perused the entire evidence on record. On re-appreciation of this evidence, we find that there is no error committed by the Sessions Court. There is no

perversity in the findings recorded by the learned Judge and we have entirely arrived at the same conclusion on our independent assessment of the evidence.

7. PW-2 is the witness who was employed as an agricultural labourer with Balasaheb Thengil, the landlord. He has stated that, on 1.8.2001, the accused finished the work at sunset and tethered the bullocks. The witness saw the accused and the victim proceeding towards the flour Mill. They returned to the home stead from the flour mill. The witness saw the accused and his wife going into their thatched house and closing the door of their house behind them. This witness then proceeds to depose to the effect that at 6.00 a.m. on 2.8.2001 when he went to start the electric motor for pumping water, he saw that the dead body of the victim was lying near the pump. He noticed a swelling around her neck. The dead body had burn marks in patches. Clothes worn by the victim were found burnt. Broken pieces of bangles were lying there at the spot. This witness informed the landlord of this incident. They then found the accused in his house. The accused told them that his wife had set herself on fire since he did not permit her to visit her parents to celebrate the festival of "Nagpanchami". The witness then informed the police of the death of Sunita. The

cross-examination of this witness has not elicited any contradictions or discrepancies.

8. PW-5 is the father of the victim. He has spoken about having learnt that the accused was married to one Rekha and that he had arranged his daughter's marriage to the accused since he was not aware of the existence of his first marriage. He has spoken about the conviction that the accused had to suffer as he had cut off the leg of Rekha. The witness then described the condition of the dead body of his daughter that he had observed when he arrived at the spot. He speaks of having seen a swelling around her neck. She was frothing from the nose. There were burn injuries on her person. Her clothes were totally burnt and the body was found in a naked condition. This witness then denied in cross-examination that his daughter was illtempered. He has stated that the accused suspected her character and ill-treated her because of that.

9. PW1 is the panch witness who has proved the spot panchnama at Exh.11. The accused pointed out the place in his hut where he had the throttled the victim. He has stated that broken pieces of red bangles were seized from the thatched house in which the accused resided with the victim and their children. PW-3 is the panch

witness who has proved Exh.15, the seizure panchnama of the articles seized from the spot where the corpse was found. Burnt pieces of clothing, broken pieces of red bangles, two steel pots, a match box and an used matchstick were seized. PW-4 who is the panchwitness has proved the inquest panchnama at Exh.17.

10. A perusal of the evidence of PW6, the medical officer who has conducted the post-mortem examination on the dead body of the victim opined that the victim died due to asphyxia caused by strangulation. 82% burn injuries which she has suffered were found to be post-mortem. The cross-examination of this witness does not in any way deflect from the credibility of this witness.

11. PW8 is the police officer who recorded the A.D. when PW2 informed the police about the death of the victim. He has drawn the inquest panchnama and the seizure panchnama at the spot where the body was found.

12. PW9 is the Investigating Officer who has conducted the investigation after the F.I.R. was lodged by PW5.

13. Taking into account the evidence of PW2 and PW5, coupled with the medical evidence on record, we are

convinced that the victim met a homicidal death. PW2 has seen the victim and the accused together on 1.8.2001 when they went into their thatched house in the evening.

There is no evidence on record indicating that either of them had been seen later that night. He has seen the dead body of the victim the next morning at 6.00 a.m. near the bandh in the field. Therefore, the prosecution theory of last seen together has been established. The fact that the victim was killed by throttling must be accepted in view of the ocular evidence on record which is corroborated by the medical evidence on record. The ocular evidence is that the witnesses had noticed a swelling around the neck of the deceased. She was throttled and her tongue was partially outside the mouth, between her teeth. The medical evidence corroborates this evidence of PW-2 and PW5 as well as the panch witnesses to the inquest panchnama. The post-mortem report shows that there was a fracture of the hyoid bone at greater wing indicating strangulation. Therefore, it is obvious that the accused first strangled the deceased and then set her on fire. The fact that broken pieces of red bangles were found in the hut indicates that there was some sort of resistence from the deceased. After having strangled the victim, the accused took the dead body and set it on fire near the bandh. As recorded by the medical officer PW6, the

burns were post-mortem. Therefore, the theory of the prosecution that the accused first strangled the victim and then set her on fire cannot be disbelieved.

14. Apart from this evidence on record, there is one more fact which we are bound to consider and that is the deposition of PW7 who is the first wife of the accused. She has deposed about the injury that she sustained at the hands of the accused and for which he was convicted and sentenced to three years' imprisonment. The accused has undergone this imprisonment. It was after he was released from prison, that he killed the victim. This witness has stated that it was because the accused suspected her fidelity that he had attacked her.

15. In our opinion, the chain of circumstances has been completed by the evidence on record and the only hypothesis possible is the complicity of the accused. The accused, in fact, in his statement under Section 313 of the Code of Criminal Procedure has stated in answer to one question that he did suspect the fidelity of his wife, the victim herein. He concedes that he used to beat his wife practically every day. The prosecution has established the motive for the accused to strangulate the deceased.

16. In the result, we confirm the conviction and sentence imposed by the Sessions Court. The appeal is dismissed.

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